

1 CENTER FOR DISABILITY ACCESS  
2 Amanda Seabock, Esq., SBN 289900  
3 Chris Carson, Esq., SBN 280048  
4 Dennis Price, Esq., SBN 279082  
5 Mail: 8033 Linda Vista Road Suite 200  
6 San Diego CA 92111  
7 (858) 375-7385; (888) 422-5191 fax  
8 dennisp@potterhandy.com

9  
10 Attorneys for Plaintiff SCOTT JOHNSON

11  
12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 **Scott Johnson,**  
16 Plaintiff,  
17 v.  
18 **Edward K. Li**, in individual and  
19 representative capacity as trustee of  
The Li Family Trust dated March 10,  
1988;  
Debra Li, in individual and  
representative capacity as trustee of  
The Li Family Trust dated March 10,  
1988;  
**Jianwei Shou**; and Does 1-10,  
Defendants.

20  
21  
22  
23  
24  
25  
26  
27  
28  
Case: 5:19-cv-08075-EJD

**Notice of Motion and  
Memorandum of Points and  
Authorities in Support of  
Motion for An Award of  
Attorney's Fees**

Date: June 25, 2020  
Time: 9:00 a.m.  
Crm: 4 (5<sup>th</sup> Floor)

Hon. Edward J. Davila

## TABLE OF CONTENTS

I.	NOTICE OF MOTION .....	1
II.	PRELIMINARY STATEMENT .....	1
III.	REASONABLENESS OF FEES.....	2
A.	Hourly Rates.....	3
B.	Hours Reasonably Expended.....	14
IV.	HENSLEY FACTORS .....	15
A.	Time and Labor Required .....	15
B.	Novelty and Difficulty of Issues.....	16
C.	Skill Required to Perform Legal Service .....	16
D.	Preclusion of Other Work .....	17
E.	Customary Fee .....	18
F.	Fixed or Contingent Fee .....	18
G.	Time Limitations .....	18
H.	Amount Involved and Results Obtained .....	18
I.	Experience and Ability of Attorneys .....	19
J.	Undesirability of the Case .....	19
K.	Nature of Relationship with Client.....	20
L.	Awards in Similar Cases.....	20
V.	LITIGATION COSTS.....	20
VI.	CONCLUSION .....	21

## TABLE OF AUTHORITIES

## Cases

<i>Armstrong v. Brown</i> (N.D. Cal. 2011) 805 F. Supp. 2d 918.....	11
<i>Blackwell v. Foley</i> , 724 F. Supp. 2d 1068 (N.D. Cal. 2010) .....	3, 13
<i>Boemio v. Love's Restaurant</i> , 954 F.Supp. 204 (S.D. Cal. 1997) .....	19
<i>Camacho v. Bridgeport Financial, Inc.</i> (9th Cir. 2008) 523 F.3d 973 .....	10
<i>Chapman v. NJ Properties</i> (2019) 5:16-cv-02893-EJD .....	11
<i>Chapman v. NJ Properties</i> (N.D. Ca., 2019) 2019 WL 3718585 .....	5
<i>Chapman v. Schellville Grill</i> (N.D. Ca., 2017) 2017 WL 2888581 .....	5
<i>Civil Rights Education and Enforcement Center v. Ashford Hospitality Trust, Inc.</i> (2016) 2016 WL 1177950 .....	11
<i>Dytch v. Lazy Dog Restaurants, LLC</i> (N.D. Cal., 2019) 2019 WL 3928752 .....	11
<i>Elder v. National Conference of Bar Examiners</i> (N.D. Cal. Sept. 12, 2011) C-11- 00199-SI, 2011 WL 4079623.....	11
<i>Estrada v. Mirlan</i> (CD Ca. 2019) 5:18-cv-01892-JGB .....	9
<i>Fernandez v. Salgado</i> (CD Ca.) 2:19-cv-01817-SK .....	9
<i>Hasbrouck v. Texaco, Inc.</i> (9th Cir. 1989) 879 F.2d. 632 .....	7
<i>Jankey v. Poop Deck</i> , 537 F.3d 1122 (9th Cir. 2008) .....	2
<i>Johnson v. Altamira</i> (N.D. Ca, 2017) 2017 WL 1383469.....	5, 6
<i>Johnson v. Oak Creek</i> (2019) 5:18-cv-04645-EJD .....	11
<i>Koire v. Metro Car Wash</i> , 40 Cal.3d 24 (1985) .....	18, 19
<i>Langer v. Gutierrez</i> (CD Ca. 2019) 04963-AB-JPR.....	9

1	<i>Lindy Bros. Builders, Inc. of Phila. v. American Radiator,</i>	
2	487 F.2d 161 (3rd Cir 1973) .....	14
3	<i>Lovell v. Chandler</i>	
4	(9th Cir. 2002) 303 F.3d 1039 .....	21
5	<i>Martin v. Diva Hospitality Group, Inc.</i> (2018) 2018 WL 6710705.....	11
6	<i>Roberts v. City of Honolulu</i> (9th Cir. 2019). 938 F.3d 1020.....	12
7	<i>Rodriguez v. Barrita, Inc</i> (2014) 53 F.Supp.3d 1268.....	11
8	<i>Serrano v. Priest,</i>	
9	20 Cal.3d 25 (1977) .....	14
10	<i>Shaw v. Five M, LLC</i> (N.D. Ca, 2017) 2017 WL 747465 .....	5, 6
11	<i>Van Gerwen v. Guarantee Mutual Life,</i>	
12	214 F.3d 1041 (9th Cir. 2000) .....	15
13	<i>Wehr v. Burroughs Corp.,</i>	
14	477 F.Supp. 1012 (E.D.Pa. 1979).....	3
15	<i>Welch v. Metropolitan Life Ins. Co.,</i>	
16	480 F.3d 942 (9th Cir. 2007) .....	4
17		
18	<b>Statutes</b>	
19	42 U.S.C. § 12205.....	2, 19
20	Cal. Civ. § 52(a) .....	2
21		
22		
23		
24		
25		
26		
27		
28		

## **I. NOTICE OF MOTION**

To Defendants Edward K. Li, Debra Li, in individual and representative capacity as trustees of The Li Family Trust dated March 10, 1988, and Jianwei Shou, and to their attorneys on record:

Please take notice that on June 25, 2020 at 9:00 a.m. or as soon thereafter as the matter may be heard in the courtroom of the Honorable Edward J. Davila, located at 280 South 1st Street, San Jose Courthouse, San Jose, California, Plaintiff Scott Johnson will and hereby does move this Court to award his reasonable attorney fees and costs in the amount of \$10,955.00 pursuant to 42 U.S.C. § 12205, California Civil Code § 52(a).

This motion is brought based on the agreement of the parties, having accepted an FRCP Rule 68 offer of judgment. This motion will be based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, the declarations and other exhibits, and all papers on file in this case.

## **II. PRELIMINARY STATEMENT**

Mr. Johnson is a person with disabilities who uses a wheelchair for mobility. He sued the defendants as owners and operators of the real property located at 520 S. Murphy Avenue, Sunnyvale, California, for failure to provide accessible paths of travel, accessible sales counters and restrooms although the law has required it since 1992. On April 14, 2020, the court entered Judgment in favor of the Plaintiff pursuant to an accepted Rule 68 Offer of Judgment. The judgment entitles Plaintiff to \$6,500 and all reasonable costs and attorney's fees incurred from his

1 suit.<sup>1</sup> Plaintiff now moves for fees and costs under the Offer of Judgment,  
2 and as prevailing party under the Americans with Disabilities Act and  
3 Unruh Civil Rights Act.

4

### 5 III. REASONABLENESS OF FEES

6 Under the American with Disabilities Act, attorney's fees are  
7 available to a prevailing party<sup>23</sup>. Additionally, under the Unruh Civil  
8 Rights Act, a defendant "is liable for" any attorney fees" suffered by any  
9 person denied the rights" provided for under Unruh. Cal. Civ. § 52(a).  
10 Additionally, the Offer of Judgment accepted in this matter explicitly  
11 entitles Plaintiff to recovery of attorney's fees. Successful litigants are  
12 entitled to reasonable attorney fees "to ensure effective access to the  
13 judicial process for persons with civil rights grievances."<sup>4</sup> "If successful  
14 plaintiffs were routinely forced to bear their own attorneys' fees, few  
15 aggrieved parties would be in a position to advance the public interest by  
16 invoking the injunctive powers of the federal courts. Consequently,  
17 recovery is the rule rather than the exception."<sup>5</sup>

18 This is a civil right entitlement, not a windfall. "It must be  
19 remembered that an award of attorneys' fees is not a gift. It is just  
20

---

21 <sup>1</sup> Plaintiff sought injunctive relief in his complaint. The rule 68 offer of  
22 judgment addresses the injunctive relief, as such no separate relief  
23 is requested here.

24 <sup>2</sup> 42 U.S.C. § 12205

25 <sup>3</sup> The Offer of Judgment contains a provision for damages, as well as  
26 injunctive relief. As this has resulted in a judicially enforceable  
27 judgment, Plaintiff is a prevailing party on both causes of action.

28 <sup>4</sup> *Hensley v. Eckerhart* (1983) 461 U.S. 424, 429

<sup>5</sup> *Jankey v. Poop Deck* (9th Cir. 2008) 537 F.3d 1122, 1131 (internal  
citations omitted).

1 compensation for expenses actually incurred in vindicating a public  
2 right.”<sup>6</sup>

The “fundamental objective” of attorney fee statutes is “to encourage suits effectuating a strong policy by awarding **substantial attorney's fees** ... to those who successfully bring such suits . . .”<sup>7</sup> To accomplish this, the award must be large enough “to entice competent counsel to undertake difficult public interest cases.”<sup>8</sup> Thus, there is a “requirement of an award of substantial attorney fees” in these disability access civil rights cases.<sup>9</sup>

The documentation submitted in support of a request for attorney fees should be sufficient to satisfy the court, or indeed a client, that the hours expended were actual, non-duplicative and reasonable and to appraise the court of the nature of the activity and the claim on which the hours were spent.<sup>10</sup> The billing statements attached as Exhibit 2 meet this standard.

#### **A. Hourly Rates**

17 A reasonable hourly rate reflects the skill and experience of the  
18 lawyer, including any relevant areas of particular expertise, and the

<sup>6</sup> *City of Sacramento v. Drew* (1989) 207 Cal. App. 3d 1287, 1304

<sup>7</sup> Woodland Hills Residents Ass'n., Inc. v. City Council (1979) 23 Cal.3d 917, 933 (emphasis added).

<sup>8</sup> San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino (1984) 155 Cal.App.3d 738, 755

<sup>24</sup>      9 *Blackwell v. Foley* (N.D. Cal. 2010) 724 F. Supp. 2d 1068, 1076 (a  
<sup>25</sup>      disability access case involving both the ADA and Unruh Civil  
<sup>26</sup>      Rights Act)

<sup>27</sup> <sup>10</sup> See *Hensley*, 461 U.S. at 437; *Wehr v. Burroughs Corp.* (E.D.Pa. 1979)  
<sup>28</sup> 477 F.Supp. 1012, 1016-18, modified on other grounds at *Wehr v. Burroughs Corp.* (3rd Cir. 1980) 619 F.2d 276

1 nature of the work performed.<sup>11</sup> The reasonable market value of the  
2 attorney's services is the measure of a reasonable hourly rate.<sup>12</sup> This  
3 standard applies regardless of whether the attorneys claiming fees charge  
4 nothing for their services, charge at below-market or discounted rates,  
5 represented the client on a straight contingent fee basis, or are in house  
6 counsel.<sup>13</sup>

7           1.         *Rates of Handling Attorneys*

8           This matter was staffed by multiple attorneys, delegating work  
9 where appropriate to reduce the overall number of hours and total costs  
10 needed on the case. Plaintiff's firm has cultivated an innovative staffing  
11 approach<sup>14</sup> in which each attorney is assigned discrete tasks and able to  
12 become experienced in narrow aspects of litigation in a short period of  
13 time.<sup>15</sup>

14           In this system, even newer associates become experienced  
15 contributors in their trained niche in short order. Each attorney is able to

---

17           <sup>11</sup> See *Hensley*, 461 U.S. at 433-34.

18           <sup>12</sup> *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094

19           <sup>13</sup> *Id.*; see also *Welch v. Metropolitan Life Ins. Co.* (9th Cir. 2007) 480 F.3d  
20           942, 946

21           <sup>14</sup> The traditional commercial firm structure has been called into question  
22           by multiple courts and scholars. *Chabner v. United of Omaha Life*  
23           *Ins. Co.* (N.D Cal., 1999) 1999 WL 33227443, 3\*, affd., (2000)  
24           225 F.3d 1042; *Nat'l Fed of the Blind v. Target Corp.* (N.D. Cal.,  
25           2009) 2009 WL 2390261, 3\*; Barak D. Richman, Contracts Meet  
26           Henry Ford, 40 *Hofstra Law Review* 77-86 (2011). (Arguing that an  
27           assembly approach to legal document generation provides value to  
28           clients.) Center for Disability Access agrees that this traditional  
                approach is not efficient and works counter to the focus on  
                specialization occurring within the profession today.

28           <sup>15</sup> Exhibit 1 - Decl. of Mark Potter ¶ 5-6

1 put a specialized focus on particular tasks at a gain of both efficiency and  
2 effectiveness within that task.<sup>16</sup> To the extent any duplication of efforts  
3 occurs as a result of this staffing method, counsel has exercised billing  
4 judgment and those billing entries are not included in the amount sought  
5 for compensation, as anticipated by *Hensley*.<sup>17</sup> In exercising further billing  
6 judgment, at no time is an attorney billed for reviewing the work of  
7 another, or familiarizing themselves with a file.<sup>18</sup> Anytime counsel would  
8 confer with one another regarding any matter, only one attorney is billed.  
9 Thus, while the overall number of attorneys that play a role in the  
10 development of one of counsel's ADA cases might be higher than that  
11 seen in other firms, the *total hours* spent in litigation, and the total costs,  
12 are lower than other staffing strategies.<sup>19</sup> This is not just a theoretical  
13 claim, as examples can be shown by comparing *Johnson v. Altamira* and  
14 *Shaw v. Five M, LLC*, where present counsel sought 9.6 and 9.8 on default  
15 judgment against *Chapman v. Schellville Grill*, where another firm billed  
16 over 30 hours on a similar case in the same posture.<sup>20</sup> Here, counsel  
17 engaged in significant litigation, exhausting nearly the entire GO 56  
18 process, and still billed barely more than half the time another firm spent  
19 on a default judgment! Using these examples, Center for Disability  
20

---

21  
22 <sup>16</sup> *Id.*

23 <sup>17</sup> *Id.* ¶ 7.

24 <sup>18</sup> *Id.*

25 <sup>19</sup> *Id.* ¶ 6.

26 <sup>20</sup> *Johnson v. Altamira* (N.D. Ca, 2017) 2017 WL 1383469; *Shaw v. Five M,*  
27 *LLC* (N.D. Ca, 2017) 2017 WL 747465; *Chapman v. Schellville*  
28 *Grill* (N.D. Ca., 2017) 2017 WL 2888581; *see also Chapman v. NJ*  
*Properties* (N.D. Ca., 2019) 2019 WL 3718585 (another firm billed  
162 hours on an ADA/Unruh case that settled prior to trial.)

1 Access plainly demonstrates the real, not just theoretical, value provided  
2 by this technique.

3 The billing demonstrates that this division of labor did not incur  
4 additional hours and reflects specialization and delegation of tasks to  
5 more junior attorneys. A description of each handling attorney's work and  
6 billing rates are detailed in the Declaration of Mark Potter.<sup>21</sup>

7           2.         *History of the Prevailing Rate in the Northern District*

8           Counsel for plaintiff has a long history of litigating ADA claims  
9 throughout the state of California over 20+ years, however, the bulk of  
10 litigation has been in the Southern and Central Districts until relatively  
11 recently. As a result, there is an abundance of attorney's fees history for  
12 those Districts. In the firm's first fee motion filed in this District, *Colston v.*  
13 *Shakti*,<sup>22</sup> the court was unable to establish a prevailing rate based on  
14 Northern District rulings and adopted the rates set by the Central District  
15 at the time. As a result of the efficiency of General Order 56 in resolving  
16 ADA claims, very few cases continue to summary judgment or trial.  
17 Subsequently, virtually all fee history in the district has been via default  
18 judgments. In many of those early cases counsel sought his Central  
19 District rates,<sup>23</sup> and being much lower than those typically awarded in the  
20 Northern District, understandably the courts granted those requests

---

21 Exhibit 1 ¶¶ 4;8-10

22 *Colston v. Shakti* (2015) 5:15-cv-02306-NC

23 *Johnson v. Altamira* (N.D. Ca, 2017) 2017 WL 1383469; *Shaw v. Five M,*  
24 *LLC* (N.D. Ca, 2017) 2017 WL 747465.

1 without further analysis, often citing to *Colson*, or other default judgment  
2 cases in the Northern District.<sup>24</sup>

3 As counsel's practice in the Northern District expanded and the  
4 Center for Disability Access began hiring dedicated attorneys to work in  
5 the Bay Area and litigation expenses increased, the firm began  
6 reassessing the proper rate to seek in litigation for cases in the Northern  
7 District. Using the Real Rate Report, the Laffey Matrix and reference to  
8 cases from other counsel, he began seeking the increased rates sought  
9 here. The first judge to address those rates with reference to the *Hensley*  
10 test, Judge Laporte in *Love v. Rivendell II*<sup>25</sup>, agreed that the rates were  
11 within the prevailing rates in the community. This was not a formality,  
12 simply signing off on fees as requested due to the default nature of the  
13 request, as Judge Laporte<sup>26</sup> enumerated the qualifications of each  
14 attorney with careful analysis citing to a variety of Northern District cases  
15 involving counsel other than those present in this case to establish the  
16 baseline rate for the Northern District:

17 “These requested rates are consistent with hourly rates  
18 that have been approved for attorneys with similar  
19 experience and qualifications in this District in ADA  
20 cases. See *Rodriguez v. Barrita*, 53 F. Supp. 3d 1268,  
21 1278-79 (N.D. Cal. 2014) (approving \$425 hourly rate of  
22 attorney with five years of disability litigation experience  
23 and \$550 hourly rate for an attorney with over two

24<sup>24</sup> *Hasbrouck v. Texaco, Inc.* (9th Cir. 1989) 879 F.2d. 632, 639  
25 (suggesting it would be improper to award a rate greater than that  
26 sought by counsel).

27<sup>25</sup> *Love v. Rivendell II* (N.D. Cal. 2019) 18-cv-03907-JST-EDL.

28<sup>26</sup> This order was reviewed and approved by District Judge Jon S. Tigar on  
April 18, 2019.

1           decades of litigation experience); Civil Rights Educ. &  
2           Enforcement Ctr. v. Ashford Hospitality Trust, Inc., 2016  
3           WL 1177950, at \*5 (N.D. Cal. Mar. 22, 2016) (approving  
4           hourly rate of \$900 for 1974 law school graduate who  
5           previously asserted as Assistant U.S. Attorney General for  
6           Civil Rights and has litigated antidiscrimination cases for  
7           40 hours, \$750 for a 1991 law school graduate who is  
8           considered a leading disability rights class action  
9           practitioner, and \$500 for a 2007 law school graduate  
10           who litigates civil rights class actions and impact  
11           litigation); Elder v. Nat'l Conf. of Bar Examiners, 2011  
12           WL 4079623, at \*4 n.4 (N.D. Cal. Sept. 12, 2011)  
13           (approving rate of \$730 per hour and \$760 per hour for  
14           attorneys with approximately three decades of civil rights  
15           litigation experience, \$535 per hour for an attorney with  
16           8 years of civil rights work, and \$350 per hour for an  
attorney with 4 years of experience)."<sup>27</sup>

17           However, other courts, disagreeing with Judges Laporte and Tigar,  
18           have continued to award substantially identical but lower rates referring  
19           back to the cases decided based on the 2011 *Rite Aid* Central District case  
20           and its progeny without faithfully applying the *Hensley/Kerr* tests. As  
21           acknowledged by one court awarding lower rates as requested by counsel,  
22           these rates have always been below or at the bottom range of the rates for  
23  
24  
25  
26  
27

---

28           <sup>27</sup> *Love v. Rivendell II* (2018) 3-18-cv-03907-EDL.

1 the Northern District of California<sup>28</sup>, regarded as one of the most  
2 expensive areas of practice in the country. Even if the Los Angeles area  
3 were considered to be analogous, as Judge Cousins decided when  
4 following the Los Angeles area rates in 2016, the Central District has  
5 largely abandoned these rates with nearly every judge to review the  
6 prevailing rates since July 2019, including Judge Wilson who wrote the  
7 original order in *Salinas v. Rite Aid* that began the adoption of the previous  
8 rate, determining that substantially increased rates of \$400-\$595 are  
9 now appropriate for the Central District.<sup>29</sup>

10

11

---

<sup>28</sup> The *Shaw* court referenced previously justified the requested \$425/hr rate with reference to a case noting “In the Bay Area, ‘reasonable hourly rates for partners range from \$560 to \$800, for associates from \$285 to \$510, and for paralegals and litigation support staff from \$150 to \$240.’” *Shaw v. Five M, LLC* (N.D. Cal., Feb. 27, 2017, No. 16-CV-03955-BLF) 2017 WL 747465, at \*5; citing *In re LinkedIn User Privacy Litig.* (N.D. Cal. 2015) 309 FRD 573, 591-92), acknowledging that the requested rate was well under market.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

<sup>29</sup> *Lindsay v. Grupo Glemka* (C.D. Cal. 2019) 2:18-cv-05136-MRW (Docket #40); *Fernandez v. Salgado* (C.D. Cal. 2019) 2:19-cv-01817-SK (Docket #36); *Whitaker v. Hieu* (C.D. Cal. 2019) 2:18-cv-10584-SVW-MRW (Docket #36); *Estrada v. Mirlan* (C.D. Cal. 2019) 5:18-cv-01892-JGB (Docket #59); *Lopez v. Getz* (C.D. Cal. 2019) 2:18-cv-02152-SJO-MRW (Docket #33); *Garibay v. Shen* (C.D. Cal. 2019) 2:18-cv-09719-RGK-E (Docket #44); *Langer v. Gutierrez* (C.D. Cal. 2019) 04963-AB-JPR (Docket #24); *Kish v. Amberheartclothing, Inc.* (C.D. Cal. 2019) 2:19-cv-01752-CJC-SPx (Docket #18); *Lammey v. Plaza Segundo* (C.D. Cal. 2019) 2:18-cv-04484-JAK-PLA (Docket #20); *Fernandez v. Brothers Auto Repair* (C.D. Cal. 2019) 2:19-cv-05194-DSF-JEM (Docket #18); *Arroyo v. Cervantes* (C.D. Cal. 2020) 8:19-cv-00182-AG-ADS (J. Selna presiding) (Docket #40)

1 Plaintiff's counsel seeks rates between \$410 per hour and \$650  
2 per hour based on the experience of the attorneys that staffed this matter,  
3 as well as the prevailing rates of the community in which this matter is  
4 venued. Recognizing the split in authority in this district and believing the  
5 rates previously assessed are substantially lower than the prevailing rate,  
6 counsel sought an expert analysis from John O'Connor in another matter,  
7 an attorney regarded as one of the best in his field in market rate  
8 analysis.<sup>30</sup> Mr. O'Connor opined, based on his experience, and with  
9 reference to recent litigation that the rates sought by counsel in this  
10 matter are reasonable.

11 Generally, when determining a reasonable hourly rate, the  
12 relevant community is the forum in which the district court sits.<sup>31</sup> These  
13 rates are in line with, and in fact lower, than those awarded in this district  
14 for similar litigation. The Northern District of California is no stranger to  
15 ADA litigation and has a history of awarding fees in line with the above  
16 requested rates, and in many cases even higher rates. A selection of rates  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

27 <sup>30</sup> Exhibit 3 – Declaration of John O'Connor  
28 <sup>31</sup> *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523 F.3d 973,  
979.

1 from various attorneys in ADA litigation in the Northern District is  
2 appended below:<sup>32</sup>

3 <b>Attorney</b>	4 <b>Rate</b>	5 <b>Case</b>	6 <b>Year</b>
Geoffrey T. Holtz	\$655/hr	<i>Armstrong</i>	2011
Scott LaBarre	\$640/hr	<i>Elder</i>	2011
Tom Frankovich	\$600/hr	<i>NJ Properties</i>	2019
Ernest Galvan	\$560/hr	<i>Armstrong</i>	2011
Celia McGuinness	\$550/hr	<i>Rodriguez</i>	2014
Anna Levine	\$535/hr	<i>Elder</i>	2011
Sara Norman	\$530/hr	<i>Armstrong</i>	2011
Jason Gong	\$650/hr	<i>Dytch</i>	2019
J.D. Legal Assistant	\$360/hr	<i>CREEC</i>	2016
Bill Lee	\$900/hr	<i>CREEC</i>	2016
Tim Fox	\$750/hr	<i>CREEC</i>	2016
Julie Wilensky	\$500/hr	<i>CREEC</i>	2016
Celia McGuinness	\$700/hr	<i>Martin</i>	2018
Paul Rein	\$700/hr	<i>Martin</i>	2018
Russell Handy	\$650/hr	<i>Rivendell II</i>	2019
Phyl Grace	\$650/hr	<i>Rivendell II</i>	2019

21 <sup>32</sup> *Armstrong v. Brown* (N.D. Cal. 2011) 805 F. Supp. 2d 918, 922-23  
22 (Appendix A); *Elder v. National Conference of Bar Examiners* (N.D.  
23 Cal. Sept. 12, 2011) C-11-00199-SI, 2011 WL 4079623;  
24 *Rodriguez v. Barrita, Inc* (2014) 53 F.Supp.3d 1268; *Dytch v. Lazy*  
25 *Dog Restaurants, LLC* (N.D. Cal., 2019) 2019 WL 3928752;  
26 *Martin v. Diva Hospitality Group, Inc.* (2018) 2018 WL 6710705;  
27 *Civil Rights Education and Enforcement Center v. Ashford Hospitality*  
28 *Trust, Inc.* (2016) 2016 WL 1177950; *Chapman v. NJ Properties*  
(2019) 5:16-cv-02893-EJD; *Johnson v. Oak Creek* (2019) 5:18-cv-  
04645-EJD.

1	Farrell Goodman	\$410/hr	<i>Rivendell II</i>	2019
2	Richard Schramm	\$860/hr	<i>Oak Creek</i>	2019

3

4        As is demonstrated by the table above, counsel's requested rates  
 5 are in line with others awarded within this community, despite the prior  
 6 recent awards suggesting a lower rate. Even a non-attorney legal assistant  
 7 was awarded a rate just \$50/hr less than the lowest rates sought by  
 8 counsel in this case. According to the Ninth Circuit, a district court  
 9 commits reversible error by focusing only on fee awards previously  
 10 awarded to a particular attorney without taking into account declarations  
 11 by the attorneys explaining why an increased hourly rate is appropriate  
 12 and determining what the prevailing market rate is.<sup>33</sup>

13       Not only are plaintiff's counsel's requested rates fully consistent  
 14 with the market but they should expect to receive similar compensation  
 15 based on counsel's experience. Both state and federal law advocates for  
 16 full and substantial compensation for disability civil rights attorneys:

17       Per statutory provisions by the United States Congress and  
 18 the California Legislature to ensure that there are attorneys  
 19 willing to perform the important function of securing the  
 20 rights of disabled persons to "full participation in the social  
 21 and economic life of the state" and to "full and equal  
 22 access," it is necessary to provide substantial compensation  
 23 for this work. Encouraging competent attorneys to handle  
 24 ADA Title III cases is necessary for effective enforcement:  
 25 former California Attorney General Dan Lungren, in a 1993  
 26 Opinion, held that California building officials could not

27

28

---

<sup>33</sup> *Roberts v. City of Honolulu* (9th Cir. 2019). 938 F.3d 1020, 1024.

1 independently enforce the ADA, and that enforcement was  
2 left primarily to private lawsuits.<sup>34</sup>

3 Present counsel's disability rights work has helped to shape ADA  
4 law with numerous, precedent setting opinions that were relied on by the  
5 above cases, including, but not limited to the following published cases:  
6 *Lozano v., C.A. Martinez Family Ltd. Partnership*, 129 F.Supp.3d 967 (S.D.  
7 Cal. 2015); *Fortyune v. City of Lomita*, 766 F.3d 1098 (9th Cir. 2014);  
8 *Cortez v. City of Porterville*, 5 F.Supp.3rd 1160 (E.D. Cal. 2014); *Johnson v.*  
9 *Wayside Prop., Inc.*, 41 F.Supp.3d 973 (E.D. Cal. 2014); *Daubert v. Lindsay*  
10 *Unified School District*, 760 F.3d 982 (9th Cir. 2014); *Munson v. Del Taco,*  
11 *Inc.*, 46 Cal.4th 66 (2009); *Nicholls v. Holiday Panay Marina, L.P.*, 93  
12 Cal.Rptr.3d 309 (Cal. App. 4th 2009); *Ortiz v. Accredited Home Lenders,*  
13 *Inc.*, 639 F. Supp. 2d 1159 (S.D. Cal. 2009); *Kittok v. Leslie's Poolmart,*  
14 *Inc.*, 687 F. Supp. 2d 953 (C.D. Cal. 2009); *Deanda v. Sav. Inv., Inc.*, 267 F.  
15 App'x 675, 676 (9th Cir. 2008); *Miller v. California Speedway Corp.* (9th  
16 Cir. 2008) 536 F.3d 1010; *Munson v. Del Taco, Inc.*, 522 F.3d 997 (9th  
17 Cir. 2008); *Grove v. De La Cruz*, 407 F. Supp. 2d 1126 (C.D. Cal. 2005);  
18 *Fortyune v. American Multi-Cinema, Inc.*, 364 F.3d 1075 (9th Cir. 2004);  
19 *Pickern v. Holiday Quality Foods, Inc.*, 293 F.3d 1133 (9th Cir. 2002);  
20 *Wyatt v. Ralphs Grocery Co.*, 65 Fed.Appx. 589 (9th Cir. 2003); *Botosan v.*  
21 *Paul McNally Realty*, 216 F.3d 827 (9th Cir. 2000); *Wyatt v. Liljenquist*, 96  
22 F. Supp. 2d 1062 (C.D. Cal. 2000).

23 “Indeed, were it not for the efforts of those attorneys willing to  
24 undertake the representation of ADA plaintiffs, there would be little, if  
25  
26  
27

---

28 <sup>34</sup> *Blackwell v. Foley* (N.D. Cal. 2010) 724 F. Supp. 2d 1068, 1075

any, enforcement of this landmark statute.”<sup>35</sup> Based on the evidence of market rate, the skill of the lawyers representing the Plaintiff, and the public interest in encouraging the private bar in enforcing the ADA, plaintiff’s counsels’ requested rates should be approved by this court.

#### **B. Hours Reasonably Expended**

Independent from establishing the rate to apply, the Court should determine the number of hours reasonably expended in this litigation: The starting point of every fee award, once it is recognized that the court’s role in equity is to provide just compensation for the attorneys, must be a calculation of the attorneys’ services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only approach that can claim objectivity, a claim which is ‘obviously vital’ to the prestige of the bar and the courts.” *Serrano v. Priest*, 20 Cal.3d 25, 49 (1977), citing *Lindy Bros. Builders, Inc. of Phila. v. American Radiator*, 487 F.2d 161 (3rd Cir 1973).

In prosecuting this matter within the guidelines imposed by General Order 56, the case was not over litigated. Defendant served a Rule 68 offer of judgment in lieu of participating in the required site inspection and the plaintiff promptly accepted. The case reasonably and necessarily involved pre-filing investigation, complaint drafting, emails, letters, phone conversations, and court filings, and this motion and the other trappings of a litigated case in which a Plaintiff could prevail.

Plaintiff’s attorneys have expended more than 13 hours to date and, as agreed by the parties, estimate another 8 hours for dealing with an opposition brief, drafting the reply, and attendance at oral argument.

---

<sup>35</sup> *Hansen v. Deercreek Plaza, LLC* (S.D.Fla. 2006) 420 F.Supp.2d 1346, 1349

1 As is clear from the billing statement, there has been no overbilling in this  
2 case and Plaintiff has attempted to specialize all hours spent to reduce the  
3 total number of hours involved in the matter.

4 All of the hours submitted to the court in the accompanying  
5 declaration of Mark Potter<sup>36</sup> and the attached billing were reasonably  
6 incurred in the prosecution of this case. Each discrete task should be  
7 viewed with reference to the amount of time spent doing it and assessing  
8 if that task was reasonably incurred and if that task was accomplished in a  
9 reasonable amount of time.

10

#### 11 IV. HENSLEY FACTORS

12 In *Hensley v. Eckerhart*,<sup>37</sup> the Supreme Court stated that the  
13 lodestar is the “presumptively reasonable fee amount” and that the Court  
14 can adjust upward or downward by a multiplier in “rare” or “exceptional”  
15 cases only.<sup>38</sup> Additionally, the *Hensley* court outlined twelve factors that a  
16 Court may consider when determining the appropriate fee award or any  
17 departure from it. Many of the factors are already subsumed into the  
18 lodestar discussion but plaintiff will briefly discuss each factor. Plaintiff  
19 seeks no modification of the lodestar.

20

##### 21 A. Time and Labor Required

22 As stated above, the plaintiff showed billing judgment and  
23 restraint. The case was not over litigated and plaintiff’s counsel expended  
24

---

25

26 <sup>36</sup> Exhibit 1

27 <sup>37</sup> *Hensley v. Eckerhart* (1983) 461 U.S. 424

28 <sup>38</sup> *Id.* at 433; *Van Gerwen v. Guarantee Mutual Life*, 214 F.3d 1041, 1045  
(9th Cir. 2000); *see also Welch*, 480 F.3d at 946.

1 less than two full work days. The plaintiff seeks no multiplier as the time  
2 expended will be compensated by the lodestar.

3

4 **B. Novelty and Difficulty of Issues**

5 The Americans with Disabilities Act itself and its interaction with  
6 California State Law is ever evolving and involves new issues and new  
7 challenges on a constant basis. Aside from the fairly novel area of  
8 Americans with Disabilities Act work in general, this case presented no  
9 significant legal issues of first impression and plaintiff seeks no multiplier  
10 based on this issue as counsel's rate incorporates this specialized  
11 expertise.

12

13 **C. Skill Required to Perform Legal Service**

14 The Americans with Disabilities Act was passed in 1990 and the  
15 Unruh Civil Rights Act was amended in 1992 to incorporate the ADA.  
16 There are only a handful of attorneys with expertise in the area. Access  
17 under Title III of the Americans with Disabilities Act is predicated upon  
18 requirements to provide access to existing public accommodations, new  
19 construction and alterations to existing buildings. Those requirements in  
20 existing public accommodations turn on whether the removal of  
21 architectural barriers is "readily achievable." In turn, there is a plethora  
22 of federal regulations, Department of Justice advisory opinions,  
23 interpretive manuals and case law that is argued by both plaintiffs and  
24 defendants as to what constitutes architectural barriers and the extent of  
25 the remedial measures necessary, if any, to remove the architectural  
26 barrier. Furthermore, there is the overlaying application of Title 24 of the  
27 California Code of Regulations requirements to public accommodations  
28

1 which were constructed or altered after 1982, and the American National  
2 Standards Institute (ANSI) between 1970 and 1982.

3 A successful prosecution of disability access cases is dependent  
4 upon a plaintiff's attorney having a thorough knowledge of the ADA and  
5 all its implementing regulations, Americans With Disabilities Act  
6 Accessibility Guidelines, Title 24 of the California Code of Regulations,  
7 ANSI standards, and the relevant sections for the California Health and  
8 Safety Code, the California Civil Code, and the California Government  
9 Code. In addition, an intimacy with the body of case law which has  
10 developed around the ADA (among which over two dozen published  
11 decisions were handled by plaintiff's counsel's office) and state statutory  
12 schemes, and the ability to couple this knowledge with a practical,  
13 strategic approach to interfacing with defendants, their own personal  
14 counsel, insurance defense attorneys, insurance carriers and the Court is  
15 absolutely essential.

16 In short, handling disability access cases demand the services of an  
17 attorney trained and specializing in the area of law. This case did not  
18 present specialized or skillful challenges and was a fairly straight-forward  
19 application of the law.

20

21 **D. Preclusion of Other Work**

22 Plaintiff's attorneys have spent around two full work days in  
23 prosecuting this case. That time could not be used, simultaneously, for  
24 other cases or other clients. Thus, the work on this case precluded other  
25 work that could have and would have been done and billed for.  
26 Nonetheless, the lodestar fully compensates for that work.

27  
28

1                   **E.       Customary Fee**

2                   As covered above, the rates and fees charged by plaintiff's counsel  
3                   are market rates.

4

5                   **F.       Fixed or Contingent Fee**

6                   As is the case with virtually all civil rights cases, the fees in this  
7                   case were contingent upon prevailing. Had the plaintiff not prevailed, the  
8                   plaintiff's attorneys would not be able to recover monies to compensate  
9                   them for the outlay of time spent in prosecuting this case. Nonetheless,  
10                  plaintiff's counsel is not seeking a multiplier.

11

12                  **G.       Time Limitations**

13                  There were no unique time limitations imposed by either the client  
14                  or the circumstances.

15

16                  **H.       Amount Involved and Results Obtained**

17                  The Plaintiff brought claims under the ADA and a companion  
18                  damages claim under Unruh Civil Rights Act for violations of his federally  
19                  guaranteed rights under the ADA and sought remedies under both acts.  
20                  It's difficult to measure the "damage" caused by denial of access. Thus,  
21                  the Unruh Civil Rights Act has a minimum that a defendant must pay. In  
22                  an Unruh case before the California Supreme Court, the defendant  
23                  violated the law but argued that it had "not harmed a single hair on the  
24                  plaintiff's head or subjected him to the slightest deprivation or  
25                  embarrassment of any kind."<sup>39</sup> The Court stated, "by passing the Unruh  
26                  Act, the Legislature established that arbitrary sex discrimination by

27

28

---

<sup>39</sup> *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 .

1 businesses is per se injurious. Section 51 provides that all patrons are  
2 entitled to equal treatment. Section 52 provides for minimum statutory  
3 damages of \$250 [previous minimum] for every violation of section 51,  
4 regardless of the plaintiff's actual damages." *Id.* at 33. The minimum  
5 damage award that was in effect for the plaintiff's case was \$4,000.  
6 Courts just don't award that much money for violations that do not  
7 involve impact injury. For example, in one of the only published decision  
8 to actually identify a damage award: *Boemio v. Love's Restaurant*,<sup>40</sup> , the  
9 court held a bench trial, found for the plaintiff, and awarded \$1,000 (then  
10 the minimum) although the plaintiff had to urinate in the parking lot. This  
11 case was no different from other access denial cases with respect to  
12 damages. It simply never involved large sums of money. Here, Mr.  
13 Johnson received \$6,500 damages agreed to in this matter, injunctive  
14 relief, and an explicit agreement to attorney's fees. He easily qualifies as a  
15 prevailing party entitled to full attorney's fees and costs.

16

17       **I.     Experience and Ability of Attorneys**

18       See discussion under "Hourly Rates" above.

19

20       **J.     Undesirability of the Case**

21       This case, like many small dollar civil rights cases, is low on the  
22 desirability scale. The clientele is largely very low income or indigent.  
23 Payment is completely dependent upon winning. It is usually big  
24 business, specialized defense counsel, and insurance companies on the  
25 other side. However, no adjustment is requested.

26

27

28

---

<sup>40</sup> *Boemio v. Love's Restaurant* (S.D. Cal. 1997) 954 F.Supp. 204

1                   **K.      Nature of Relationship with Client**

2                   The Center for Disability Access has no relationship with Mr.  
3                   Johnson other than in representing him in his ADA/Unruh claims.

4                   **L.      Awards in Similar Cases.**

5                   This matter is discussed above.

7                   **V. LITIGATION COSTS**

8                   The plaintiff seeks \$875.00 in costs. This includes traditional costs  
9                   such as the service cost (\$75) and the filing fee (\$400) as well as the  
10                  litigation expenses that includes the investigation (\$400). Section 505 of  
11                  the Americans with Disabilities Act (42 U.S.C. § 12205) authorizes  
12                  reasonable attorney's fees, including "litigation expenses and costs," in  
13                  any action brought under the Act. This includes all costs normally  
14                  associated with litigation including investigative costs:

16                  According to committee reports, Congress included the term  
17                  "litigation expenses" in order to authorize a court to shift  
18                  costs such as expert witness fees, travel expenses, and the  
19                  preparation of exhibits. See H.R. Rpt. No. 101-485(III) at  
20                  73, reprinted in 1990 U.S.C.C.A.N. 445, 496 (Report of the  
21                  Committee on the Judiciary) ("Litigation expenses include  
22                  the costs of expert witnesses. This provision explicitly  
23                  incorporates the phrase 'including litigation expenses' to  
24                  respond to rulings of the Supreme Court that items such as  
25                  expert witness fees, travel expenses, etc., be explicitly  
26                  included if intended to be covered under an attorney's fee  
27                  provision."); H.R. Rpt. No. 101-485(II) at 140, reprinted in  
28                  1990 U.S.C.C.A.N. 303, 423 (Report of the Committee on

1 Education and Labor) (“Litigation expenses include the  
2 costs of experts and the preparation of exhibits.”).<sup>41</sup>

3 “The federal statute, unlike the state statutes, explicitly provides for not  
4 only attorney's fees but also litigation expenses and costs.”<sup>42</sup>

5

6 **VI. CONCLUSION**

7 The plaintiff respectfully requests that his motion be granted and  
8 he be awarded \$11,820.00.

9

10 Dated: April 28, 2020

CENTER FOR DISABILITY ACCESS

11

12 By: /s/ Dennis Price

13 Dennis Price, Esq.  
14 Attorney for Plaintiff

15

16

17

18

19

20

21

22

23

24

25

26

---

27 <sup>41</sup> *Lovell v. Chandler* (9th Cir. 2002) 303 F.3d 1039, 1058

28 <sup>42</sup> *Saldana-Neily v. Taco Bell of Am., Inc.* (N.D. Cal. 2008) 2008 WL  
793872, \*3